

United States
Circuit Court of Appeals
For the Ninth Circuit.

THOMAS W. SYNNOTT, a Creditor, Individually, and
as the Duly Authorized Attorney for, and Agent of
ALEXANDER SEDGWICK and MERRILL K.
GREEN,

Appellant,

vs.

THE TOMBSTONE CONSOLIDATED MINES
COMPANY, LIMITED, Bankrupt, and A. L.
GROW, as Trustee in Bankruptcy of THE TOMB-
STONE CONSOLIDATED MINES COMPANY,
Bankrupt,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Arizona.

FILED
APR 21 1913

United States
Circuit Court of Appeals
For the Ninth Circuit.

THOMAS W. SYNNOTT, a Creditor, Individually, and
as the Duly Authorized Attorney for, and Agent of
ALEXANDER SEDGWICK and MERRILL K.
GREEN,

Appellant,

vs.

THE TOMBSTONE CONSOLIDATED MINES
COMPANY, LIMITED, Bankrupt, and A. L.
GROW, as Trustee in Bankruptcy of THE TOMB-
STONE CONSOLIDATED MINES COMPANY,
Bankrupt,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Arizona.

INDEX OF PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Appeal Bond of Thomas W. Synnott.....	27
Assignment of Errors by the Creditor and Appellant Herein.....	25
Certificate of Clerk U. S. District Court to Transcript of Record.....	35
Certificate of Referee in Bankruptcy.....	5
Citation on Appeal (Copy).....	31
Decision	20
Opinion and Order Approving and Confirming Findings and Order of Referee in Bankruptcy Disallowing Certain Claims.....	20
Order Approving Appeal Bond.....	20
Order Fixing Amount of Bond on Appeal....	19
Order Confirming Acts of Referee in Bankruptcy.....	18
Order of Referee in Bankruptcy Disallowing Claim.....	3
Order of Referee in Bankruptcy Granting Petition for Review.....	4
Order of Submission of Petition for Review....	18
Orders Continuing Hearing of Petition for Review.....	14

Index.	Page
Petition on Appeal of Thos. W. Synnott, a Creditor Herein.....	24
Petition to U. S. District Court for Review.....	1
Praeceipe for Transcript of Record on Appeal..	33
Praeceipe That Certified Copy of Decision be Incorporated in Transcript on Appeal.....	34
Proof of Claim of Thomas W. Synnott et al... .	6
Stipulation That Special Contract Bonds may be Sent up on Appeal.....	30
Transcript of the Minute Entries.....	14

[Petition to U. S. District Court for Review.]

[2*] *In the District Court of the United States for
the District of Arizona.*

IN BANKRUPTCY—No. 72.

In the Matter of THE TOMBSTONE CONSOLI-
DATED MINES COMPANY, LIMITED,
Bankrupt.

To Daniel McFarland, Esq., Referee in Bankruptcy.

Your petitioners respectfully show:

That your petitioners are creditors of the Tombstone Consolidated Mines Company, Limited, the above-named bankrupt, and that their claim has been disallowed herein.

That on the 8th day of August, 1912, Thomas W. Synnott, of Philadelphia, in the County of Philadelphia, in the District of Pennsylvania, individual, also attorney for and duly authorized agent of Alexander Sedgwick, of New York, State of New York, and Merrill K. Green, of Boston, Commonwealth of Massachusetts, filed in your office, as Referee, a proof of claim against the above-named bankrupt, in favor of Alexander Sedgwick, of New York, State of New York, and Merrill K. Green, of Boston, Commonwealth of Massachusetts, founded upon (461) Special Contract Bonds, of the face value of four hundred thirty-nine thousand and fifty-five dollars (\$439,055.00), with interest thereon from the several dates of the bonds thereto annexed.

That the said claim having been objected to by John Mason [3] Ross, attorney for the Trustee

*Page-number appearing at top of page of original certified Record.

herein, the said claim was by you, as Referee, disallowed. That on the 8th day of August, an order of disallowance, a copy of which is hereto annexed, was by you, as Referee, made and entered herein.

That such order was and is erroneous, in that the said Special Contract Bonds upon which said claim was founded are fixed liabilities of the said bankrupt herein, absolutely owing at the time of the filing of the petition against the said Bankrupt, and that said claim in the amount of said bonds is evidenced by instruments in writing, to wit, the said bonds thereto annexed.

WHEREFORE, your petitioners, feeling aggrieved because of such order, pray that the same may be reviewed as provided in the Bankruptey Law of 1898 and general order XXVII.

Dated August 24th, 1912.

RICHARDSON & DOAN,

FRANK W. DOAN,

For Petitioners.

State of Arizona,

County of Cochise,—ss.

I, Frank W. Doan, attorney for the petitioners mentioned and described in the foregoing petition, do hereby make solemn oath that the statements of fact therein contained are true, according to the best of my knowledge, information and belief.

FRANK W. DOAN.

Subscribed and sworn to before me this 24th day of August, A. D. 1912.

My commission expires Feb. 16, 1916.

[4] [Notarial Seal] JOHN DOAN,
Notary Public.

**[Order of Referee in Bankruptcy Disallowing
Claim.]**

*At a Court of Bankruptcy Held in the District Court
of the United States for the District of Arizona.*

At Tombstone, this 8th day of August, A. D. 1912.

IN BANKRUPTCY—No. 72.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LIMITED,
Bankrupt.

Thomas W. Synnott, of Philadelphia, in the County of Philadelphia, in the District of Pennsylvania, individual, also attorney for and duly authorized agent of Alexander Sedgwick, of New York, State of New York, and Merrill K. Green, of Boston, Commonwealth of Massachusetts, having filed in the office of the Referee, a proof of claim against the above-named bankrupt, in favor of Alexander Sedgwick of New York, State of New York, and Merrill K. Green of Boston, Commonwealth of Massachusetts, founded upon (461) Special Contract Bonds, of the face value of Four Hundred Thirty-nine Thousand Fifty-five Dollars (\$439,055.00), together with the interest from the several dates of the bonds hereto annexed.

And said claim having been objected to by John Mason Ross, attorney for the trustee herein, and the objection having come on for a hearing before

me, and due deliberation having been had, and it appearing to me that such Special Contract Bonds, upon which said claim is founded, are only [5] contingent liabilities, and not fixed liabilities, as evidenced by instruments in writing, absolutely owing at the time of the filing of the petition against said bankrupt:

IT IS ORDERED, that said claim be, and the same hereby is, disallowed.

DANIEL McFARLAND,
Referee in Bankruptcy.

**[Order of Referee in Bankruptcy Granting Petition
for Review.]**

ORDER THEREON.

In the United States District Court
for the District of Arizona,—ss.

At Tombstone, in said District, on the 26th day of August, A. D. 1912, on reading the foregoing petition for a review,

IT IS ORDERED, that the same be, and hereby is, granted.

DANIEL McFARLAND,
Referee in Bankruptcy.

[Endorsements]: B-21. In the District Court of the United States for the District of Arizona. In the Matter of the Tombstone Consolidated Mines Company, Ltd., Bankrupt. Petition for Review and Order Thereon Granting Same. Filed at 1 o'clock P. M., August 26th, 1912. Referee in Bankruptcy. Daniel McFarland, Richardson & Doan, Frank W. Doan, Attorneys for Petitioners. Filed Aug. 30, 1912. Allan B. Jaynes, Clerk.

[Certificate of Referee in Bankruptcy.]

[6] *In the District Court of the United States for the District of Arizona.*

IN BANKRUPTCY—No. 72.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LIMITED,
Bankrupt.

To the Honorable RICHARD E. SLOAN, District Judge:

I, Daniel McFarland, the Referee in Bankruptcy in charge of this proceeding, do hereby certify:

That, in the course of such proceeding, an order, a copy of which is annexed to the petition herein-after referred to, was made and entered on the 8th day of August, A. D. 1912;

That on the 26th day of August, A. D. 1912, Merrill K. Green, of Boston, Massachusetts, and Alexander Sedgwick, of New York, State of New York, alleged creditors in such proceedings, feeling aggrieved thereat, filed a petition for a review, which was granted;

That a summary of the evidence on which said order was based is as follows: Documentary, as disclosed by Special Contract Bonds herewith handed up.

That the question presented on this review is, Are such Special Contract Bonds provable debts in bankruptcy?

I hand up herewith for the information of the Judge:

1.

Proof of claim.

2.

Special Contract Bonds, upon which said claim is founded.

[7] 3.

Copy of order disallowing said claim.

4.

Petition for review and the order thereon granting same.

Dated at Tombstone, in said District, on the 26th day of August, A. D. 1912.

Respectfully submitted,

DANIEL McFARLAND,

Referee in Bankruptcy.

[Endorsements]: B-21. District Court of the United States for the District of Arizona. In the Matter of the Tombstone Consolidated Mines Company, Ltd., Bankrupt. Certificate on Review. Filed Aug. 30, 1912. Allan B. Jaynes, Clerk.

[Proof of Claim of Thomas W. Synnott et al.]**[8] *In the District Court of the United States for the District of Arizona.***In the Matter of **TOMBSTONE CONSOLIDATED MINES CO., LTD.,**

Bankrupt.

At Rangeley, in the District of Maine, on the 1st day of August, A. D. 1912, came Thomas W. Synnott, of Philadelphia, in the County of Philadelphia, in the District of Pennsylvania, individual, also attorney for and duly authorized agent of Alexander

Sedgwick of New York, State of New York, and Merrill K. Green, of Boston, Commonwealth of Massachusetts, and made oath and says:

That the Tombstone Consolidated Mines Co., Ltd., the person against whom a petition for adjudication in bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to the assignors of said Synott, Sedgwick and Green, in the sum of \$439,055 dollars, together with interest from the several dates of the bonds hereto annexed as therein set forth; that the consideration for said debt is as follows: 461 Special Contract Bonds, serial numbers, together with the denominations, are in the schedules hereto annexed marked "A" of said Tombstone Consolidated Mines Co., Ltd. That no part of said debt has been paid; that there are no setoffs or counterclaims to the same; and that the only security held by the deponent or his principals [9] for said debt is the following: Said 461 Special Contract Bonds, which consists of a first lien on all of the assets of said bankrupt estate, subject to the right of other like bondholders to participate in the same. And this deponent further says that this deposition cannot be made by the other claimants in person, because they are not accessible, and that he is duly authorized by his principals to make this affidavit, and it is within his knowledge that the aforesaid debt was incurred, as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

In offering said claim for proof said deponent does so without in any way waiving his security, but insisting on the same.

THOMAS W. SYNNOTT,
Creditor.

Subscribed and sworn to before me this 1st day of August, A. D. 1912.

[Notarial Seal]

H. A. FURBISK,
Notary Public.

A.

SPECIAL CONTRACT BONDS OF THE TOMB-STONE CONSOLIDATED MINES CO., LTD.

Registered Name.	Serials Nos.	Face Value.
Dr. A. E. Abrams	5-671-675	\$5,000
[10] Walter D. Adams	2-1435-1436	200
Gen. F. C. Ainsworth	6-188-189-2563-2567	5,500
Victor Aylward	1	500
Mary A. Bacon	10-1024-1033	1,000
S. H. Bacon	5-1270-1273, 1385	500
Gertrude S. Bailey	8-2621-2628	2,300
Leon O. Bailey	10-949-952, 954-960, 2656, 2682, 2683	11,725
Wendell Bancroft	2-1437, 1438	400
Clinton V. D. Barnes	1-457	500
Henry C. Barnes	5-449, 557, 1511, 1512, 17	3,000
Bayard Barnes	8-	8,000
Lena C. Bassette	1-866	100
C. W. Beatty	2-21, 22	4,750
Albert Beaumont	2-2032, 1937	400
C. A. Benner		200
Francis Bennett	2-765, 766	1,000

Registered Name.	Serials Nos.	Face Value.
Graee A. Bissell	1-2216	500
O. H. Boulee	1-102	100
William A. Brown 2nd.	1-884	50
William S. Browne	1-247	500
George A. Burgess	1-1902	1,000
William Campbell	1-2197	500
Mrs. Annie L. Carrington	1-1941	100
J. B. Carrington,	2-2157, 494	3,000
John B. Carrington, Trustee	4-1942-1945	400
[11] Harriet M. Chapman	10-1156-1160, 1260-1264	10,000
Abraham Coehran	5-1853-1857	450
C. C. Cogswell	1-217	500
Elizabeth G. Cole	1-2084	1,000
Mattie A. Cole	1-54,	500
Frank A. Corbin	5-76-78, 1719, 1809	2,300
David Crary, Jr.	1-2217	500
W. H. Curtis, Jr.,	4-1624-1627	1,000
W. F. Darby,	12-467-470, 690, 691, 1574- 1577, 1935, 2386	3,800
Fred W. Doolittle	1-1958	500
Lueilla W. Dye	1-258	500
Kellogg Fairbank		57,000
Frank S. Fay	3-1614-1616	300
George Tod Ford	3-579, 2388, 2392	55,000
Jennie B. Fowler	1-438	100
John H. Franeis	1-2205	200
Phillip Godley	5-225-229	5,000
Charles H. Graham	17-2340, 2341, 2557, 2323, 1355-1357, 2242, 2370,	

Registered Name.	Serials Nos.	Face Value.
	2717, 754, 1217, 1529,	
	1530, 2162, 2163, 2646	23,050
Luey A. Gordon	4-1003-1006	200
Charles B. Graves	1-375	2,500
Arthur H. Hacker	4-281, 282, 2647, 2648	1,000
E. J. Hall	2-1887, 1888	1,000
[12] James S. Haring	4-1387-1389, 2035	400
Jeanie Henderson	1-2362	3,000
2 Henderson & Co.	2-2360, 2361	7,000
Henry E. Holmes	1-1061	1,000
Ettie L. Howe,	1-2083	1,000
Daniel Hurley	1-2034	500
William Hutton	2-1194, 1558	1,000
C. F. Ingalls	1-1562	500
Samuel J. Kelley	1	500
Belinda Hearn Jouet	2-2657-2665	300
Herman Katz	2-768, 769	200
Edward S. Lacey	2-1572, 1573	2,000
Florence Freeman Land	1-2473	500
Frank Land	4-2469-2472	2,000
G. W. Lemaster	1-207	1,000
Pierce Lesher	1-315	500
Thomas Lloyd	1-117	500
Moses Lyman	2-2290-2294	500
Sarah P. Lyman	5-2289-2291, 2251, 2252	2,700
Stanley McCormick	10-798-807	10,000
The Robert McCurdy Co.	1-19	3,000
Agnes M. McDonough	1-1508	. 500
J. H. McEwen	1-31	700
F. D. McIntyre	2-584, 1940	1,000
Sarah A. Hanning	1-484	500

The Tombstone Con. Mines Co., Ltd., et al. 11

Registered Name.	Serials Nos.	Face Value.
Genevieve P. Martin	4-447, 2029, 2097, 2402	3,050
John A. Martin	5-1060, 2028, 2303, 2304, 2652	4,500
Martha J. Martin	2-2202, 2203	300
[13] H. William Meiss	1-872	1,000
David B. Meeklejohn	2-146, 147	200
Sarah E. Meeklejohn	1-148	100
J. C. Miller	2-318, 409	200
Sarah Miller	1-2464	100
John P. Mullen	1-1506	500
Myron A. Norris	4-307-309, 444	3,500
Herman Pahren	10-623-627, 699-703	1,000
George E. Painter	1-750	1,000
E. L. Peabody	1-735	100
Don C. Pollard	1-1073	100
C. W. Poster	1-2398	200
J. F. Pratt	1-1089	1,000
Charles L. Pruyn	12-736-745, 2320, 2321	15,000
Sarah T. Pruyn	2-2316, 2317	5,000
Albert E. Rand	6-1191, 2190, 1210, 863, 183, 923	3,000
Mary A. Rand	1-862	50
Ellen M. Rand	1-861	50
W. S. Randall	1-1950	500
James P. Redmond	5-263-267	500
Professor H. C. Reaser	3-1531, 1532, 2101	750
Emil G. Reinert	1-2058	500
Mrs. A. K. Rhoades		2,000
Willis R. Roberts	1-2055	1,000
Montgomery H. Rochester	4-1542, 1543, 2318, 2319	2,000

Registered Name.	Serials Nos.	Faee Value.
Professor E. A. Ross	12-1490-1498, 554-556	1,700
[14] William W. Rugg	1-593	500
P. W. Schaaf	1-105	100
Alex Sedgwick		11,000
Henry R. Smith	3-403, 1852, 1224	7,000
Hiram C. Smith	12-2474, 2483, 2329, 2450	10,550
Dr. Marvin Smith	3-1118-1120	300
W. L. L. Speneer	1-451	100
Thomas W. Synnott	43-230, 231, 390, 391, 404, 424, 425, 487, 492, 498, 499, 628, 630, 638, 681, 772, 773, 888-890, 1018, 1213, 1254, 1314, 1341, 1831, 1850, 2086, 2087, 2180, 2192, 2225, 2256, 2260, 2403-2407.	37,500
Mary D. Synnott	1-2728	5,000
John Taylor	1-452	1,000
Frederick Tillinghast	5-2089-2093	5,000
Mrs. Roxanna Tuttle	1-2099	200
Louis D. P. Vail	1-1612	1,000
W. B. Waekerhagen	2-1544, 1545	500
Miss H. P. Wakefield	1-259	500
William P. Walker	1-686	500
Frank A. Wallace	3-2301, 485, 486	2,000
Rose M. Wallace	2-483, 2302	1,500
C. C. Warner	2-1095, 1096	1,000
George E. Weymouth	3-1309, 1400, 1401	250
Ellen E. Wheeler	3-168, 2077, 2078	3,000
Mary D. Whitaker	2-220, 221	200

Registered Name.	Serials Nos.	Face Value.
[15] Amos T. White	3-1446, 1775, 1776	1,600
Honorable Peter W. White		5,000
Franeis P. White	1-583	100
Lilly May Wiltshire	1-1190	500
William F. Wiltshire	1-1434	500
James C. Whittet	2-500, 501	200
Katherine J. Woodward	1-834	500
Frank Ehlem	3-109-111	3,000
N. B. Diekerman	1-2310	100
Robert K. Porter	1-1726	250
Marion Ward Raymenton	1-2224	200
Charles O. Stone	1-324	500
Lyman W. Winslow	1-269	1,000
Charles Whiteomb	1-388	200
Geoffrey T. Yost	1-689	500
Elizabeth K. White	1-1745	500
Richard Henry Woodnut		1,000
W. W. Curtis		500
Mary E. Dobson		400
Lineoln Brown	12-85, 1325, 50-52, 58, 59, 1249-1253	2,000
Mary M. Curtis	3-353-1135	625
Lura P. Curtis	1-33	425
William D. Curtis	10-887, 2485, 2415, 808, 1587, 1212, 354, 355, 1807, 2229	8,600
[16] Walter G. Graves	1-2265	500
R. W. Kenny	5-1652-1656	2,500
Miriam G. Smith		430
Andrew G. Webster	5-1218-1222	2,500
Sarah W. Pratt	1-2718	600
George W. Walker	7-2365, 2366, 1657-1661,	3,500
A. K. Rhoades	2-459, 1619	2,000

[Endorsements]: B-21. In re Tombstone Consolidated Mines Co., Ltd. Proof of Claim of Thomas W. Synnott et al., Creditor. Filed and disallowed at 11 o'clock A. M., Aug. 8th, A. D. 1912. Daniel McFarland, Referee in Bankruptcy. Geo. R. Blinn and Adams & Blinn, 30 Court Street, Boston. Amos L. Taylor, 30 Court Street, Boston. Filed Aug. 30, 1912. Allan B. Jaynes, Clerk.

[17] IN BANKRUPTCY—No. B-21.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,
Bankrupt.

Transcript of the Minute Entries.

BE IT REMEMBERED that heretofore, to wit, on the ninth day of September, A. D. 1912, the same being one of the regular juridical days of the April, 1912, Term of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

[Orders Continuing Hearing of Petition for Review.]

B-21.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,
Bankrupt.

It is ordered that the hearing of the petition for review herein be continued until Monday, September 16, 1912, at 10:00 o'clock A. M. (1-308.)

AND AFTERWARDS, and upon, to wit, the 16th day of September, A. D. 1912, the same being one of the regular juridical days of the April, 1912, Term of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

B-21.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,
Bankrupt.

It is ordered that the hearing of the petition for review herein be continued until Monday, September 23, 1912, at 10:00 [18] o'clock A. M. (1-315.)

AND AFTERWARDS, and upon, to wit, the 23d day of September, A. D. 1912, the same being one of the regular juridical days of the April, 1912, Term of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

B-21.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,
Bankrupt.

It is ordered that the hearing of the petition for review herein be continued until Monday, September 30, 1912, at 10:00 o'clock A. M. (1-325.)

AND AFTERWARDS, and upon, to wit, the 30th day of September, A. D. 1912, the same being one of

the regular juridical days of the April, 1912, Term of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

B-21.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,
Bankrupt.

It is ordered that the hearing of the petition for review herein be continued until Monday, October 7, 1912, at 10:00 o'clock A. M. (1-335.)

AND AFTERWARDS, and upon, to wit, the 7th day of October, A. D. 1912, the same being one of the regular juridical days of [19] the October, 1912, Term of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

B-21.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,
Bankrupt.

It is ordered that the hearing of the petition on review herein be continued until Monday, October 21, 1912, at 10:00 o'clock A. M. (1-371.)

AND AFTERWARDS, and upon, to wit, the 11th day of November, A. D. 1912, the same being one of the regular juridical days of the October, 1912, Term of said court, the following order, *inter alia*, was had

and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

B-21.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,

Bankrupt.

It is ordered that the hearing of the petition for review herein be and the same is now continued until Monday, November 25, 1912, at 9:30 o'clock A. M. (1-590.)

AND AFTERWARDS, and upon, to wit, the 25th day of November, A. D. 1912, the same being one of the regular juridical days of the October, 1912, Term of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

[20] IN BANKRUPTCY—B—21.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,

Bankrupt.

It is ordered that the petition for review herein be and the same is now continued until Monday, December 23, 1912, at 9:30 o'clock A. M. (2-24.)

AND AFTERWARDS, and upon, to wit, the 23d day of December, A. D. 1912, the same being one of the regular juridical days of the October, 1912, Term of said court, the following order, *inter alia*, was had and entered of record in said court in said cause,

which said order is in words and figures as follows, to wit:

[Order of Submission of Petition for Review.]

B-21.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,
Bankrupt.

By consent of counsel for the respective parties hereto, it is ordered that the petition herein be submitted to the Court on briefs, the brief of the attorneys for the trustee to be filed within five days from this date and the brief of the attorneys for petitioners to be filed within ten days thereafter, and that thereupon said matter shall be taken under advisement by the Court. (2-70.)

AND AFTERWARDS, and upon, to wit, the 17th day of February, A. D. 1913, the same being one of the regular juridical days of the October, 1912, Term of said court, the following order, *inter alia*, was had and entered of record [21] in said court in said cause, which said order is in words and figures as follows, to wit:

[Order Confirming Acts of Referee in Bankruptcy.]

B-21.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,
Bankrupt.

The petition for review herein having been argued and fully submitted at a previous session of the present term of this court and the Court being now fully

advised in the premises, does confirm the acts of the referee in bankruptcy which the petitioners seek to review, in accordance with the written opinion filed herein. (2-138.)

AND AFTERWARDS, and upon, to wit, the 24th day of February, A. D. 1913, the same being one of the regular juridical days of the October, 1912, Term of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

B-21.

[Order Fixing Amount of Bond on Appeal.]

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,
Bankrupt.

Upon motion of Messrs. Doan & Doan, counsel for Thomas W. Synnott, it is ordered that the bond on appeal of said petitioner be and the same is hereby fixed at the sum of One Thousand Dollars (\$1,000.00). (2-145.)

AND AFTERWARDS, and upon, to wit, the 28th day of February, A. D. 1913, the same being one of the regular juridical days of the October, 1912, Term of said court, the following [22] order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures as follows, to wit:

[Order Approving Appeal Bond.]

B-21.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,
Bankrupt.

It is ordered that the appeal bond of Thomas W. Synnott, in the sum of One Thousand Dollars, with the United States Fidelity and Guaranty Company, a corporation, as surety, be and the same is hereby approved. (2-153.)

[Opinion and Order Approving and Confirming Findings and Order of Referee in Bankruptcy Disallowing Certain Claims.]

[23] In the United States District Court for the District of Arizona.

B-21.

In Re TOMBSTONE CONSOLIDATED MINES COMPANY, LIMITED.

DECISION UPON CERTAIN APPEALS FROM ORDERS OF THE REFEREE DISALLOWING CERTAIN CLAIMS.

The Referee has certified for review his findings and orders disallowing certain claims presented for allowance against the estate of the above-named bankrupt, based upon what are known as the Special Contract Bonds issued by the said bankrupt company. The Referee found that these bonds did not constitute "a fixed liability as evidenced by a judg-

ment or an instrument in writing absolutely owing at the time of the filing of the petition," and hence were not debts provable in bankruptcy.

The record in the case of each of the disallowed claims presented for review consists of the petition, the order of the Referee, and a copy of the said bonds. The issue of law raised upon the review becomes, therefore, purely one of construction to be given the latter.

It is contended here in behalf of the holders of the bonds that the bonds constitute, if not a lien at law, yet an equitable lien upon the general assets of the company. The soundness of this contention must be determined by the rule of construction, universally applied to such instruments, [24] that the true intent and purport of the contract must be found from a consideration of its provisions as a whole, reading each clause in the light of its context and evident relation to other parts of the instrument. A careful reading and study of the instrument will disclose no provision from which may be inferred an intent to create a general lien on the assets of the mining company as security for its payment. On the contrary, the whole tenor of the instrument is that the lien intended to be created was one that should be limited to the surplus earnings of the company. So long as the company should be a going concern, the right of the holder was restricted to the enforcement of the provisions regarding the disposition of such surplus earnings. The bond was not to mature upon any fixed date nor upon any contingency such as a failure to pay the interest or installment coupons

provided for; only in the event of liquidation or dissolution the bonds were to be preferred as against the stock in any distribution of the surplus assets. It is nowhere even suggested that the rights of creditors of the company to enforce their claims against the company should be subordinated to any lien created by the bond other than such as might arise through the creation out of such surplus earnings of the interest and retirement funds provided for in clause II of the contract. Unless there should be earnings of the company from which these funds should be created and maintained, the rights of holders of these special contract bonds to enforce payment could not arise from a failure [25] on the part of the company to pay either interest or the principal sum. Nor is there anything in clause VII of the contract that may be construed as creating any general lien when read in the light of all the provisions of the contract. Not only this, but in other clauses language is used to make definite and clear the limitation of the lien, first to the surplus earnings agreed to be devoted to the interest and retirement funds, and second, in the event of liquidation or dissolution, to the assets of the company that would otherwise be distributed to the holders of the stock of the company.

As already noted, there is no definite promise of payment of either interest or principal expressed in the bond. The absence of any such promise with the specific and clear provisions in reference to the creation of interest and retirement funds out of surplus earnings and in reference to payment, in the

event of liquidation or dissolution, before anything should be paid the stockholders, are inconsistent with the claim that the holders of the bonds sustained the relation of general creditors of the company at the time the petition was filed or became such by reason of the adjudication. Whether or not they should be held to possess rights and privileges, analogous, in essentials, to those of preferred stockholders, certainly unless a new and different contract from that expressed be read into the bond there is insufficient warrant for holding that the instrument permits the holders of these bonds to assert rights to the prejudice of the general creditors. As I construe the special contract bond, the holder [26] of one is neither a general creditor nor such a lienholder as entitles him to the status of a holder of a provable debt under any clause of Section 63 of the Bankrupt Act.

The findings and orders of the Referee, therefore, disallowing the claims of Richard Garlick and Charles B. Wells, executor of the estate of Thomas H. Wells, deceased, of Alexander Sedgwick, of Thos. W. Synnott, of Merrill K. Green and Alexander Sedgwick, of J. H. Haerr, of W. Lee Kauffman, of George R. Blinn, of F. A. Reilly, of Grace Jewett Seigfried, of Henry B. Favill, of Mary Holmes Garlick, and of Harriet M. Smith, are each of them approved and confirmed.

RICHARD E. SLOAN,
U. S. District Judge.

[Endorsements]: B-21. (35) United States District Court, District of Arizona. Tombstone Con.

Mines Co., Bankrupt. Order Sustaining Referee.
Filed Feb. 17, 1913. Allan B. Jaynes, Clerk. By
Frank E. McCrary, Deputy.

*In the United States District Court for the District
of Arizona.*

No. B-21.

In the Matter of THE TOMBSTONE CONSOLI-
DATED MINES COMPANY, LTD.,
A Bankrupt.

Petition on Appeal of Thos. W. Synnott, a Creditor
Herein.

[27] The above-named Thos. W. Synnott, a creditor herein, considering himself aggrieved by the judgment made and entered on the 17th day of February, 1913, in the above-entitled cause, does hereby appeal from such judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors, which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

THOS. W. SYNNOTT,

Appellant.

By ADAMS & BLINN,

EHRICK & WHEELER,

DOAN & DOAN,

FLETCHER M. DOAN,

Attorneys for Appellant.

*In the United States District Court for the District
of Arizona.*

No. B-21.

In the Matter of THE TOMBSTONE CONSOLI-
DATED MINES COMPANY, LTD.,
A Bankrupt.

**Assignment of Errors by the Creditor and Appellant
Herein.**

Comes now the creditor and appellant herein and says that the decree herein rendered on February 17, 1913, is erroneous and against the just rights of said creditor and appellant in bankruptcy for the following reasons:

The said decision is in error in holding that the bonds in question disclosed no provision from which it may be [28] inferred an intent to create a general lien on the assets of the mining company, the bankrupt herein, as security for the payment of the said bond.

The said decision is in error in holding that the tenor of the said instrument, namely, the bond is that the lien intended to be created thereby is one that should be limited to the surplus earnings of the company, and that the bondholders' rights were restricted to the enforcement and those provisions regarding the disposition of the surplus earnings.

The said decision is in error in holding that the said bonds were only to be preferred as against the stock in a distribution of the surplus assets of the company issuing them in the event of liquidation or dissolution.

The said decision is in error in holding that the special contract bond does not entitle the holder thereof to the standing of either a general creditor or a lienholder so as to entitle him to the status of a holder of a provable debt under section 63 of the Bankrupt Act.

The said decision is in error in approving and confirming the acts of the referee in disallowing the claim filed on said bond upon the theory that the same is not a fixed liability as evidenced by an instrument in writing absolutely owing at the time of the filing of the petition.

The said decision is in error in holding that there is nothing in clause VII of the contract bond that may be properly construed as creating a general lien when read in the light of all the provisions of the contract bond.

[29] Wherefore, the said creditor and appellant herein prays that said order judgment, decree and decision of February 17, 1913, approving and confirming the action of the referee herein and disallowing the claim of the creditor and appellant herein be reversed, and that said Court may be directed to enter a decree overruling and disaffirming the action of the referee.

ADAMS & BLINN,
EHRICK & WHEELER,
DOAN & DOAN,

Attorneys for Appellant.

[Endorsements]: No. B-21. (40.) U. S. District Court, District of Arizona. Tombstone Con. Mines Co., Ltd., Bankrupt. Appeal and Asst. of Errors.

Thos. W. Synnott. Filed Febr. 24, 1913, at 4 P. M.
Allan B. Jaynes, Clerk. By Francis D. Crable,
Deputy.

*In the District Court of the United States for the
District of Arizona.*

IN BANKRUPTCY—No. 72.

No. B-21.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,
A Bankrupt.

Appeal Bond of Thomas W. Synnott.

KNOW ALL MEN BY THESE PRESENTS:
That we, Thomas W. Synnott, individually, and
[30] Thomas W. Synnott as the duly authorized
attorney and agent of Alexander Sedgwick and Mer-
rill K. Green, as principal, and the United States
Fidelity & Guaranty Company, a corporation, as
sureties, are held and firmly bound unto the Tomb-
stone Consolidated Mines Company, Ltd., in the full
and just sum of one thousand dollars (\$1,000.00), to
be paid to the said Tombstone Consolidated Mines
Company, Ltd., their certain attorneys, agents,
successors or assigns; for which payment, well and
truly to be made, we bond ourselves, our heirs, exec-
utors and administrators, successors and assigns,
jointly and severally by these presents.

Sealed with our seals and dated this 27th day of
February, 1913.

Whereas, lately, at the District Court of the

United States for the District of Arizona, in a suit depending in said court, wherein the Tombstone Consolidated Mines Company, Ltd., is bankrupt, and the said Thomas W. Synnott, individually, and Thomas W. Synnott as the duly authorized attorney and agent of Alexander Sedgwick and Merrill K. Green, was a creditor, a decree was rendered against the said Thomas W. Synnott, individually, and as attorney and agent of said Alexander Sedgwick and Merrill K. Green, and the said Thomas W. Synnott, individually, and as such attorney and agent, having obtained an appeal and filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit and a citation directed to the said Tombstone Consolidated Mines Company, Ltd., citing and admonishing it to be and appear [31] at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco in said Circuit:

Now, the condition of the above obligation is such that if the said Thomas W. Synnott, individually, and as the duly authorized attorney and agent of said Alexander Sedgwick and Merrill K. Green, shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good,

then the above obligation shall be void; else to remain in full force and virtue.

THOMAS W. SYNNOTT.

THOMAS W. SYNNOTT,

Attorney and Agent for Alexander Sedgwick and
Merrill K. Green.

UNITED STATES FIDELITY & GUAR-
ANTY CO.

[Corporate Seal]

By ALFRED C. LOCKWOOD,

Its Attorney in Fact.

Sealed and delivered in the presence of

A. SMITH.

A. Y. WRIGHT.

State of Arizona,

County of Cochise,—ss.

Before me, A. Y. Wright, a notary public in and for the county and State aforesaid, on this day personally appeared Alfred C. Lockwood, known to me to be the person whose name is subscribed to the foregoing instrument as the attorney in fact of the United States Fidelity & Guaranty Company, [32] a corporation, and acknowledged to me that he signed the name of the United States Fidelity & Guaranty Company thereto as principal, and his own name thereto as attorney in fact, and that as such attorney in fact he executed the same for the purpose and consideration therein expressed as the free act and deed of the said corporation, and by him voluntarily executed, and in accordance with the direction of the executive officers of said corporation.

Given under my hand and seal of office this 27th day of February, 1913.

[Notarial Seal]

A. Y. WRIGHT,
Notary Public.

My commission expires February 16, 1916.

[Endorsements]: In Bankruptcy—#72. No. B-21. (47.) United States District Court for the District of Arizona. In the Matter of the Tombstone Consolidated Mines Company, Ltd., a Bankrupt. Appeal Bond of Thomas W. Synnott. Doan and Doan, Attorneys for Creditor. Filed February 28, 1913. Allan B. Jaynes, Clerk.

[33] *In the United States District Court for the District of Arizona.*

No. B-21.

IN BANKRUPTCY—No. 72.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.

Stipulation [That Special Contract Bonds may be Sent Up on Appeal].

It is hereby stipulated and agreed between the attorneys for appellant and the attorneys for appellee that the Special Contract Bond herein, the instrument on which the claim was filed, may be, by the Clerk of the United States District Court for the District of Arizona, sent up on appeal with the other

papers herein so as to obviate the necessity of making a complete copy thereof.

Dated March 4, 1913.

EHRICK & WHEELER,

ADAMS & BLINN, .

DOAN & DOAN,

FLETCHER M. DOAN,

Attorneys for Appellant.

ELLINWOOD & ROSS,

Attorneys for Appellee.

[Endorsements]: B-21. 50. U. S. District Court, District of Arizona. Tombstone Consolidated Mines Co., Ltd., Bankrupt. Stipulation. Doan and Doan, Attorneys for Appellant. Douglas, Arizona. Filed Mar. 13, 1913. Allan B. Jaynes, Clerk.

[Citation on Appeal (Copy).]

[34] *In the United States District Court for the District of Arizona.*

No. B-21.

IN BANKRUPTCY.

In the Matter of TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,

Bankrupt.

United States of America,—ss.

The President of the United States of America to Tombstone Consolidated Mines Company, Ltd., and A. L. Grow, Trustee of Tombstone Consolidated Mines Company, Ltd., Bankrupt.

You and each of you are hereby cited and admon-

ished to appear in the United States Circuit Court of Appeals for the Ninth Judicial Circuit within thirty (30) days from the date of this writ, pursuant to the appeal duly obtained and filed in the Clerk's office of the United States District Court for the District of Arizona, wherein you are appellees and Thomas W. Synnott is the appellant, to show cause, if any there be, why the order and decree in said appeal mentioned should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf, and to do and receive *that* may appertain to justice to be done in the premises.

Witness, The Honorable RICHARD E. SLOAN, United States Judge for the District of Arizona, this 3d day of March, 1913.

RICHARD E. SLOAN,
Judge.

[35] Service of the within Citation accepted on behalf of the Tombstone Consolidated Mines Company, Ltd., a Bankrupt, this 5th day of March, 1913.

ELLINWOOD & ROSS,
Attorneys for A. L. Grow, Trustee.

[Endorsements]: No. B-21. (51.) United States District Court for the District of Arizona. In the Matter of the Tombstone Consolidated Mines Company, Ltd., a Bankrupt. Citation. Filed Mar. 13, 1913. Allan B. Jaynes, Clerk.

[36] *In the United States District Court for the District of Arizona.*

No. B-21.

IN BANKRUPTCY—No. 72.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LTD.,
A Bankrupt.

Praecipe [for Transcript of Record on Appeal].

Clerk of the United States District Court:

In preparing the transcript on appeal in this case, you will include therein the Petition and Proof of Claim, the Certificate of Review, all orders or entries made by the Referee in Bankruptcy as they appear in your court, all minute entries, all orders of the Court confirming the action of the Referee, set forth in full, the Petition on Appeal, Assignment of Errors, Bond and Citation. You will omit making a copy of the Special Contract Bond unless we notify you by additional direction, as we expect to have signed the stipulation that you may send up the original bond.

EHRICK & WHEELER,

ADAMS & BLINN,

DOAN & DOAN,

FLETCHER M. DOAN,

Attorneys for Appellant.

[Endorsements]: No. B-21. (49.) United States District Court, for the District of Arizona. [37] In the Matter of the Tombstone Consolidated Mines

Company, Ltd., a Bankrupt. Praeipe. Doan & Doan, Attorneys for Appellant. Filed March 6, 1913. Allan B. Jaynes, Clerk of the Court.

In the United States District Court for the District of Arizona.

In the Matter of THE TOMBSTONE CONSOLIDATED MINES COMPANY, LIMITED,
A Bankrupt.

Praeipe [That Certified Copy of Decision be Incorporated in Transcript on Appeal].

Mr. Allan B. Jaynes, Clerk of said Court.

Please incorporate in the transcript on appeal herein to the Circuit Court of Appeals a certified copy of the decision of this Honorable Court upon which the order herein appealed from was entered.

Respectfully,
ELLINWOOD & ROSS,
Attorneys for A. L. Grow, Trustee.

[Endorsements]: B-21. (52.) In the United States District Court for the District of Arizona. In the Matter of the Tombstone Consolidated Mines Company, Ltd., a Bankrupt. Praeipe. Filed March 20, 1913. Allan B. Jaynes, Clerk.

[Certificate of Clerk U. S. District Court to
Transcript of Record.]

*In the United States District Court for the District
of Arizona.*

No. B-21.

In the Matter of THE TOMBSTONE CONSOLI-
DATED MINES COMPANY, LTD.,
Bankrupt.

United States of America,
District of Arizona,—ss.

I, Allan B. Jaynes, Clerk of the United States District Court for the District of Arizona, do hereby certify that the foregoing pages, numbered 1 to 37, inclusive, together with the 461 special contract bonds, being petitioner's exhibits herein, constitute and are a true, complete and correct copy of the record, pleadings, and all proceedings had in said action as the same remain on file and of record in said District Court. I also annex the original citation in said action.

I further certify that the cost of preparing and certifying to said record amounts to the sum of \$22.90, and that the same has been paid in full by the appellant, Thomas W. Synnott.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States District Court for the District of Arizona at Phoenix, in said District, this 21st day of March, in the year of our Lord one thousand nine hundred and thirteen,

and of the Independence of the United States of America the one hundred and thirty-seventh.

[Seal] ALLAN B. JAYNES,
Clerk United States District Court, District of Arizona.

[Endorsed]: No. 2263. United States Circuit Court of Appeals for the Ninth Circuit. Thomas W. Synnott, a Creditor, Individually, and as the Duly Authorized Attorney for and Agent of Alexander Sedgwick and Merrill K. Green, Appellant, vs. The Tombstone Consolidated Mines Company, Limited, Bankrupt, and A. L. Grow, as Trustee in Bankruptcy of The Tombstone Consolidated Mines Company, Bankrupt, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Received March 31, 1913.

F. D. MONCKTON,
Clerk.

Filed April 2, 1913.

F. D. MONCKTON,
Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.